

## 37 Am. Jur. 2d Fraud and Deceit § 54

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### Fraud and Deceit

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#### III. Means of Perpetration

##### B. False Pretenses and Fraudulent Devices, Schemes, and Tricks

## § 54. Fraudulently procuring settlement or release

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### West's Key Number Digest

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[Insurer's tort liability for acts of adjuster seeking to obtain settlement or release, 39 A.L.R.3d 739](#)

[Right of action for fraud, duress, or the like, causing instant plaintiff to release or compromise a cause of action against third person, 58 A.L.R.2d 500](#)

Where a right of action exists, and the defendant, or someone for him or her, by fraudulent representations induces the plaintiff to make a settlement or release of his or her cause for an inadequate sum, the plaintiff may either avoid the settlement or release and sue on his or her original right of action<sup>1</sup> or may sue in fraud and deceit and recover such amount as will make the settlement an honest one.<sup>2</sup> It is also a general rule that where a wrongdoer fraudulently conceals his or her wrong from the injured person, who agrees, in ignorance of the wrong, to a settlement of the accounts of the wrongdoer and the entry of a judgment or judicial decree in accordance with the agreement, the decree does not defeat an action for damages resulting from the fraud.<sup>3</sup> In the absence of knowledge of fraud in the inducement of a compromise agreement, such agreement cannot be set up by the defense to an action for the fraud on the theory that the agreement released the defendant from the fraud.<sup>4</sup> Moreover, a compromise agreement settling a judgment is held not to defeat a cause of action for damages for fraud in inducing the settlement even though no affidavit is taken as to the financial condition of the judgment debtor.<sup>5</sup> However, there are differing views on whether an action can be maintained to recover damages for fraud practiced upon the plaintiff in inducing him or her to execute a release to the defendant for personal injuries, some jurisdictions holding that the claim cannot be maintained since the fraud complained of renders the release invalid, and the original cause of action, therefore, remains to the plaintiff.<sup>6</sup> Similarly, an action for deceit for fraudulently inducing the execution of a release will not lie unless rescission will not fully protect the releasor.<sup>7</sup> Where the limitation of time within which an action must be brought is a limitation of the right and not of the remedy, an action may not be maintained, after the expiration of such time, for fraud

in obtaining a release whereby the plaintiff lost the value of his or her cause of action, in the absence of any proof of damages other than those flowing from the original wrongful act.<sup>8</sup> However, other courts have stated that the remedy of rescission is rarely adequate because the plaintiffs are often prejudiced by delay in having their claims adjudicated, and that damages for fraud are conceptually different from damages for the underlying tort claims and are not too speculative to calculate, and permit the action for fraud to be maintained; for these reasons, the claim is permissible.<sup>9</sup>

Under the prevailing view, an action for fraud and deceit may be predicated on misrepresentations by which one is induced to release or compromise a cause of action against a third person.<sup>10</sup>

**Observation:**

Although an injured party may be obligated to tender a return of the consideration received for signing a release as a prerequisite to rescission on any ground other than fraud, there is no requirement that a cause of action for rescission must be joined with one for damages for fraud<sup>11</sup> or that the consideration must be tendered back in order to maintain an action for fraud.<sup>12</sup>

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Footnotes

<sup>1</sup> As to fraud as a ground for invalidating a compromise and settlement, see generally [Am. Jur. 2d, Compromise and Settlement §§ 32, 33](#).

As to fraud vitiating a release and rescission or cancellation of the release for fraud, see [Am. Jur. 2d, Release §§ 23, 24](#).

<sup>2</sup> [Sade v. Northern Natural Gas Co.](#), 483 F.2d 230 (10th Cir. 1973) (applying Oklahoma law); [Farm Bureau Mut. Ins. Co. of Ind. v. Seal](#), 134 Ind. App. 269, 179 N.E.2d 760 (1962).

<sup>3</sup> [Ross v. Preston](#), 292 N.Y. 433, 55 N.E.2d 490 (1944).

<sup>4</sup> [Brooklyn Nat. Bank of N.Y. v. Werblow](#), 263 A.D. 884, 32 N.Y.S.2d 169 (2d Dep't 1942).

<sup>5</sup> [Deutsch v. Roy](#), 239 A.D. 714, 268 N.Y.S. 606 (1st Dep't 1934), aff'd, 269 N.Y. 508, 199 N.E. 510 (1935).

<sup>6</sup> [Lomax v. Southwest Missouri Electric Ry. Co.](#), 106 Mo. App. 551, 81 S.W. 225 (1904).

<sup>7</sup> [Shallenberger v. Motorists Mut. Ins. Co.](#), 167 Ohio St. 494, 5 Ohio Op. 2d 173, 150 N.E.2d 295 (1958).

<sup>8</sup> [Wichita Falls & S. R. Co. v. Durham](#), 132 Tex. 143, 120 S.W.2d 803, 120 A.L.R. 1497 (Comm'n App. 1938).

<sup>9</sup> [Matsuura v. Alston & Bird](#), 166 F.3d 1006 (9th Cir. 1999), opinion amended on other grounds on denial of reh'g, 179 F.3d 1131 (9th Cir. 1999).

<sup>10</sup> [Indiana Ins. Co. v. Handlon](#), 216 Ind. 442, 24 N.E.2d 1003 (1940); [Ware v. State Farm Mut. Auto. Ins. Co.](#), 181 Kan. 291, 311 P.2d 316 (1957).

<sup>11</sup> [Byrnes v. National Union Ins. Co.](#), 34 A.D.2d 872, 310 N.Y.S.2d 781 (3d Dep't 1970).

<sup>12</sup> [Morta v. Korea Ins. Corp.](#), 840 F.2d 1452 (9th Cir. 1988); [Byrnes v. National Union Ins. Co.](#), 34 A.D.2d 872, 310 N.Y.S.2d 781 (3d Dep't 1970).

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